

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5586 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RANJITSINGH JOGINDARSINGH GIL

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner
Mr.SJ Dave, A.G.P. for Respondents No.1,2 & 3
Mr.Sunil C.Patel, Addl.Standing Counsel for
Respondent No.4

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 21/08/97

ORAL JUDGEMENT

The petitioner - Ranjitsingh Jogindersingh Gil has brought under challenge the impugned order of detention dated 26th June 1997 passed by respondent No.2, District Magistrate, under Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short "PBM Act") in this

petition under Article 226 of the Constitution of India.

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B. They inter-alia indicate as under :

The petitioner was running the shop "Dembla Enterprise" owned by one Shri Girdharilal Gulabray Dembla having licence upto 31.12.2000. Because of the sickness of Girdharilal the detenu was running his business. This fact was admitted by the detenu before the Supply Inspector on 14.6.1997 and 24.1.1997.

The shop run by the detenu had been raided by the Deputy Collector, Vadodara and Supply Inspector and following serious irregularities were noticed :

At the time of inspection it was found that the stock Register had not been written and on the next inspection on 24.1.1997 instead of 18494.5 litre kerosene only 15145 litre kerosene had been found. Thus, there was shortage of 3349.5 litre of kerosene. These facts were admitted by the detenu before Panchas on 24.1.1997. It has, therefore, been alleged that the deficit stock had been sold in black marketing.

As per the detenu's statement before the Inquiry Officer one tanker No.GCF 2611 had been already dispatched with 4000 litre of kerosene. The detenu admitted preparation of the bills for 7295 litres for the retailers. On inquiry of tanker only nine bills had been found. The supply of kerosene under the tanker was to the extent of 1606 ltrs. of kerosene. Thus, remaining quota of kerosene of 2394 ltrs. was without bill/s and no instructions had been given to the driver. The tanker had been ceased at about 12.15 p.m. The detenu stated that all the bills had been sent along with the tanker while Karimbhai Vohra, the driver of the tanker, gave contradictory statement. Thus, it has been alleged that quota of 2394 ltrs. of kerosene has been dispatched with a view to sell the same in black marketing.

The Inquiry Officer made inquiry with the retailers, hawkers and fair price owners and considering the statements it was found that some of the dealers who had paid the amount in advance had neither been supplied the quota of kerosene as per the bills nor did they get any quota except the quota under bills. Hence, it has been alleged that only after giving the bills the detenu has directly sold away blue kerosene in black marketing and got financial benefit. It has been alleged that the

detenu misappropriated 966 ltrs. of kerosene for which bills in the name of four different retailers has been given on 24.1.1997. It has also been alleged that 2279.5 ltrs. of kerosene has been misappropriated by giving the bills without any kerosene or by giving kerosene of less quantity than what had been reflected in the bills. This was in respect of 5 different retailers.

On inquiry it was also found that the Stock Register had not been maintained on 23.1.1997 with ulterior motive for adjusting the account regarding kerosene sold in black market.

On 14.6.1997 the Inquiry Officer found that Bill No.5289 to 5296 had been intact with the detenu and the detenu admitted the same in his statement dated 14.6.1997. The Bills were in favour of 8 different retailers and the total stock of kerosene was reflected in the bill was 2685.5 ltrs. of kerosene which according to the detaining authority had been done with a view to sell the kerosene in black marketing.

As per the statement of three different retailers recorded on 26.6.1997 the detenu had supplied less quantity of kerosene than what was stated in the bills issued by the detenu. Thus, the detaining Authority found the detenu indulging him in habit of mal-practice.

On 6.7.1997 the Inquiry Officer found excess stock of 925 ltrs. of kerosene with the detenu and it has been alleged that such excess stock was kept by detenu with a view to sell the same in black marketing.

Similarly on 14.2.1997, the Inquiry Officer found 219 ltrs. of kerosene in excess with the detenu.

On the aforesaid ground as well as upon verification of the statement of retailers, the person running fair price shop, hawkers as also after verifying the Sale Register, Stock Register, Bill Book and other material the detaining Authority found that the petitioner has been committing breach of the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 and the Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993 and that it became necessary to preventively detain the petitioner under the aforesaid provision of PBM Act, else the petitioner might continue his illegal activity.

3. The petitioner has challenged the impugned order of detention as also his continued detention under the

said order on number of grounds, inter-alia, on the ground that the petitioner's right of making effective representation has been jeopardised on account of the fact that the petitioner has been supplied with illegible copies of the documents/papers appearing at Pages 35, 37, 39, 41, 43, 45, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 77 and 135. Mr.S.J.Dave, learned A.G.P. verified from the documents/papers supplied to the detenu and frankly submits before the court that except the documents appearing at Page 69 and 135, all other papers/documents are either not legible or partly not legible. This verification has been made by Mr.Dave in the company of concerned officer from the Department, who has been present in the court.

4. It is not in dispute that these papers/documents are relevant and would obviously affect valuable right of the petitioner to make effective representation. In that view of the matter thereis clear violation of Article 22(5) of the Constitution of India and the impugned order of detention as also continued detention thereunder will have to be set aside.

5. As the petitioner succeeds on the aforesaid aground of non-supply of legible copies of relevant documents/papers, it would not be necessary to deal with other grounds of challenge levelled against the impugned order of detention.

6. In the result, this petition is allowed. The continued detention of the petitioner Ranjitsing Jogindersing Gil under the impugned order of detention is directed to be put an end to and the petitioner shall be released immediately, if he is not required to be detained in any other case.

Rule made absolute in the aforesaid terms.

Direct service permitted.

* * * * *

sas